17-379

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~869.~~ X66 273

THE DISTRICT OF COLUMBIA, PLAINTIFF IN ERROR,

vs.

CHARLES H. ARMES, ADMINISTRATOR OF E. W. DU BOSE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 23, 1880.

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1 *Declaration.—Filed July 2, 1878.*

In the supreme court of the District of Columbia the day of A. D. 1878.

E. W. DU BOSE, PLAINTIFF,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } At Law. No. 19749.

The plaintiff sues the defendant, a municipal corporation under and by virtue of the laws of the Congress of the United States, for that whereas, heretofore, to wit, on or about the 21st day of February, A. D. 1877, there was and had been prior thereto, and still is, a certain common and public highway, or street, in the city of Washington, in the District aforesaid, known as 13th street, northwest, which said highway or street was, on the date last aforesaid, and for a long time prior thereto, had been, and still is, used by the residents of said city, and other
2 good citizens of the United States, for passing and repassing, on, over, along and across the same on foot as well as otherwise; and, whereas, said defendant being a municipal corporation, as aforesaid, and well knowing the premises was bound to exercise due care in respect to the safety of citizens and all other persons properly passing along said highway, or street, and on, over, and across the same as aforesaid, and was bound to exercise such reasonable care, police, or other power and authority, as to render said highway or street safe and convenient for persons passing and repassing, as aforesaid; yet, nevertheless, the plaintiff avers that heretofore, to wit: on or about the said 21st day of February, A. D. 1877, the said highway, or street, on the east side thereof, between F and G streets, northwest, about 50 feet or 100 feet north from said F street, was in a dangerous and unsafe condition, by reason of the gross negligence and default of the defendant, in not exercising the care,
3 authority, police, or other power, aforesaid, of all which said defendant had notice; yet, nevertheless, to wit, on the day and year last aforesaid, the defendant, not regarding and performing its duty, as aforesaid, wrongfully and negligently suffered, permitted and allowed said highway, or street, as aforesaid, at the place aforesaid, to be and remain in a dangerous and unsafe condition, unguarded, and without fixing, placing, or causing to be fixed or placed any sufficient light, or lights, signal or signals, barricade, or barricades, or other warning, at or near the dangerous precipice and deep, dangerous, and great excavation then and there in said street, at the place aforesaid, to denote or show that the same was so there, as aforesaid, and made no proper effort to secure the same against accident, or to warn persons passing along said common or public highway, or street, of the existence of said precipice and excavation, and failed to perform and discharge such
4 proper and reasonable care, authority, duty, police, or other power as was necessary in the premises, and as the defendant was bound to perform and discharge for the protection of the citizen or other persons against such accident, by reason of and in consequence of which gross negligence and failure of defendant to do and perform its duty in that regard as aforesaid, the plaintiff, then and there, to wit, on the day and year aforesaid, in the city and District aforesaid, in the evening, or night time, whilst walking in a southerly direction, moderately and carefully along said 13th street, on the east side thereof, between F and G streets aforesaid, stepped down and fell over the dangerous precipice,

and into the deep, dangerous, and great excavation on said 13th street, at the place aforesaid, which said precipice and excavation were, and for a long time had been, in said street, as aforesaid, left open, unguarded and unprotected, through the gross negligence and default of said defendant, whereby the plaintiff's legs at and near the knees,
5 became injured, bruised, contused, abraded, and otherwise disabled, and his legs and knee joints rendered weak and unsound, and the plaintiff was and is unable to use his legs and knee joints without great pain and weakness therein; and the plaintiff's spine was jarred, bruised, irritated, inflamed and otherwise injured, and is rendered weak, painful, and unsound, and so by means of said injuries the plaintiff became and was sick, lame, and disordered for a long space of time, during which he suffered, and still suffers great pain, inconvenience, and physical prostration, and is permanently incapacitated, and his general health greatly injured and impaired, and was, and is, hindered from attending to his necessary and lawful business, and was and is deprived of divers gains and profits, all of which by reason of said injuries as aforesaid, and was obliged to expend divers sums of money, to wit, $1,000.00 in and about endeavoring to be healed and cured
6 of said bruises, and other injuries, and said physical prostration, weakness, pain, and disorder resulting therefrom, as aforesaid.

2D COUNT. And for that the defendant, being a municipal corporation as aforesaid, became and was bound to exercise and perform reasonable and proper police or other power and authority with reference to the safety of the citizens and other persons in passing and repassing along, over, and across the public highways or streets of said city of Washington, over which it, the said defendant, was the only local or municipal government, and was not relieved by law of the exercise and performance of such power and authority over said highways or streets, yet, nevertheless, the plaintiff avers that on or about the 21st day of February, A. D. 1877, there was, and had been for a long time prior thereto, and still is a certain common and public highway or street, in the city aforesaid, known as Thirteenth street, northwest, and that on the day and year last aforesaid, the said highway or street, on
7 the east side thereof, between F and G streets, northwest, about 50 feet, or 100 feet north from said F street, was in a dangerous and unsafe condition, by reason of a certain dangerous precipice and excavation theretofore made by the defendant, its agents or employees, and by the defendant then and there in said 13th street carelessly, negligently, and wrongfully suffered and permitted to remain, and that it was the duty of the defendant as aforesaid to warn the citizen and all other persons rightfully passing along said public highway or street of its dangerous and unsafe condition, of which the defendant had notice, yet, nevertheless, the plaintiff avers that on the day and year last aforesaid, in the evening, or night time, while walking from said G street, toward said F street, moderately and carefully along said 13th street, on the east side thereof, between F and G streets aforesaid, upon the brick pavement, which, as such, was then and there by permission,
8 direction, and authority of the defendant, as aforesaid, he stepped down and fell over the dangerous precipice and into the deep, dangerous, and great excavation which was then and there left open, unguarded, and unprotected, without anything having been done by said defendant to denote or show that the same was so there, as aforesaid, and to protect the citizen or other persons from injury by falling over or into the same as aforesaid, whereby, and in consequence of which gross negligence and failure on the part of the defendant to perform its

corporate duty in that behalf, the plaintiff was then and there injured in his legs, spine and body, so much so as to cause great suffering, sickness, pain, and anguish, and seriously and permanently hinder and incapacitate him from attending to his lawful and ordinary business, and hinder and prevent him from earning his livelihood; and by reason of said injuries, he was and is deprived of divers gains and profits,
9 and was obliged to spend divers sums of money, to wit, $1,000.00, in and about endeavoring to be healed and cured of said injuries as aforesaid, and is rendered unable to walk, or ride on horseback, with ease and comfort, as he did prior to said injuries, and is also seriously and permanently injured in his bodily health and strength, to the great damage of the plaintiff in the sum of five thousand dollars, and therefore he brings this suit.

C. H. ARMES,
A. A. BIRNEY,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

C. H. ARMES,
A. A. BIRNEY,
Attorneys for Plaintiff.

10 *Summons.—Issued July 2, 1878.*

In the supreme court of the District of Columbia.

E. W. DU BOSE, PLAINTIFF,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } At law. No. 19749.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness, D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Asst. Clerk.*

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

11 *Marshal's return on back of writ.*

Served copies of the declaration, notice to plead, and this summons, on the defendant, by leaving copies with A. G. Riddle, att'y for D. C., the 2d day of July, 1878.

F. DOUGLASS, *Marshal.*

Service accepted.
July 2, 1878.

A. G. RIDDLE, *Att'y, D. C.*

Defendant's plea.—Filed July 19, 1878.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

The defendant says that it is not guilty as alleged.

A. G. RIDDLE,
Attorney for Defendant.

12 *Joinder of issue.—Filed July* 22, 1878.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

The plaintiff joins issue with the defendant on its plea herein pleaded.

C. H. ARMES,
A. A. BIRNEY,
Att'ys for Plaintiff.

Note of issue.—Filed July 22, 1878.

Supreme court District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. 19749.

The clerk will please calendar this cause for trial.

A. A. BIRNEY,
Of Pl'ff's Counsel.

Issue joined July 22, 1878.
For plaintiff, Armes & Birney & Birney.
For def't, A. G. Riddle.

13 Proceedings before the supreme court of the District of Columbia, holding a special term and circuit court in and for said District, commencing on the second Monday, 12th day of May, A. D. 1879.

MONDAY, *May* 12, 1879.

By order of Cox, justice, one of the justices of said court presiding. The court is opened by proclamation of the marshal, pursuant to rule of court.

* * * * * * *

MONDAY, *June* 9, 1879.

Session resumed pursuant to adjournment, Wylie, justice, presiding.

* * * * * * *

E. W. DU BOSE, PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749. Cal. 652.

By agreement of parties by their respective attorneys, leave is granted the plaintiff to amend his declaration as he may be advised.

14 *Amendment of declaration.—Filed June* 9, 1879.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } No. 19749. At law.

The plaintiff, by and with the consent of the attorney for the defendant, leave of the court being first had and obtained, hereby amends his declaration heretofore filed herein by inserting in each count thereof and after the words "divers gains and profits" in each of said counts, the words and figures following, to wit:

That the plaintiff is by profession a physician, and has for many years practiced as such with honor and profit; that he has several times heretofore been, and is now, under contract an acting assistant surgeon in the United States Army, and in consideration of his services in
15 that capacity receives from the said United States pay at the rate of $100.00 per month, commutation of rations at the rate of $9.00 per month, and fuel of the value of, to wit, $150 per annum, which pay, commutation, and fuel are in addition to his gains from the private practice of his profession; that he is now, by reason of the injury aforesaid, permanently incapacitated both in mind and body from the private practice of his profession, and also from performing the duties incumbent upon him under the contract aforesaid, and will be obliged to discontinue such private practice and surrender said contract and place of acting assistant surgeon, and the pay and emoluments thereof.

And the plaintiff also amends said declaration by striking out the words "Five thousand dollars" in the last line of said declaration, and inserting in lieu and place thereof the words "Fifteen thousand dollars."

16 C. H. ARMES,
A. A. BIRNEY,
Attorneys for Plaintiff.

I hereby consent that the above amendments shall be made, and adopt the plea heretofore filed for defendant as its plea to said declaration as amended.

June 9, 1879.

A. G. RIDDLE,
Attorney for Defendant.

Demurrer to declaration.—Filed June 17, 1879.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

Demurrer.

The defendant says that the declaration as amended is bad in substance.

A. G. RIDDLE,
FRANCIS MILLER,
Attorneys for Def't.

17 NOTE.—One of the points of law to be argued on this demurrer is that the declaration as amended does not show any damage to have been done plaintiff by his alleged accident, but they are future and contingent.

Joinder in demurrer.—Filed June 19, 1879.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
DISTRICT OF COLUMBIA. } At law. No. 19749.

The plaintiff says the declaration as amended is good in substance.

C. H. ARMES,
A. A. BIRNEY,
Att'ys for Plaintiff.

THURSDAY, *July* 3, 1879.

Session resumed pursuant to adjournment, Wylie, justice, presiding.

18 * * * * * * *

E. W. DU BOSE, PL'FF,
vs.
DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749. Cal. 652.

Upon hearing the defendant's demurrer to the plaintiff's amended declaration, it is considered that said demurrer be, and the same is hereby, overruled; and on motion, leave is granted the defendant to plead over.

Defendant's plea.—Filed July 10, 1879.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

For plea to said declaration as amended, the defendant says that it is not guilty as alleged.

A. G. RIDDLE,
FRANCIS MILLER,
Attorneys for Def't.

19 *Joinder of issue.—Filed July* 10, 1879.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } No. 19749.

The plaintiff joins issue with the defendant on its plea to the amended declaration herein.

A. A. BIRNEY,
C. H. ARMES,
Att'ys for Plaintiff.

Proceedings before the supreme court of the District of Columbia, holding a term for the trial of law causes, and designated as Division number 2, commencing the fourth Monday, 26th day of January, A. D. 1880.

MONDAY, *January 26th, A. D.* 1880.

By order of Walter S. Cox, one of the justices of said court, presiding, the court is opened by proclamation of the marshal, pursuant to rule of court.

* * * * * * *

THURSDAY, *February 26th, A. D.* 1880.

Session resumed pursuant to adjournment, Justice Walter S. Cox presiding.

* * * * * * *

E. W. DU BOSE, PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749. Cal. 348.

Now come here as well the plaintiff, by his attorneys, Mr. A. A. Birney and Mr. C. H. Arms, as the defendant, by its attorney, Mr. A. G. Riddle, and a jury of good and lawful men of this District, to wit, George B. Harrison, Ferdinand King, Charles E. Cameron, William T. Washington, Matthew J. Laughlin, George H. Thompson, John Hogan, Daniel C. Chew, William H. Faulkner, Robert A. Griffin, George A. Diggs, and Hiram S. Washburn, who, being duly sworn to try the issue joined between the parties, are respited till the meeting of the court tomorrow morning.

* * * * * * *

FRIDAY, *February 27th, A. D.* 1880.

Session resumed pursuant to adjournment, Justice Walter S. Cox presiding.

E. W. DU BOSE, PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749. Cal. 348.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a partial hearing of the case, are again respited until the meeting of the court on Monday morning next.

* * * * * * *

MONDAY, *March 1st, A. D.* 1880.

Session resumed pursuant to adjournment, Walter S. Cox, justice, presiding.

E. W. DU BOSE, PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749. Cal. 348.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited Friday, who, after the case

is given the m in charge, retire to their room to consider of their verdict, with permission, if they agree, after reducing their verdict to writing, signing, sealing, and delivering the same to their foreman, to separate until the meeting of the court to-morrow morning.

* * * * * * *

TUESDAY, *March 2nd, A. D.* 1880.

Session resumed pursuant to adjournment; Walter S. Cox, justice, presiding.

E. W. DU BOSE, PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749. Cal. 348.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury return into court and on their oath say they find the issue joined between the p rties in favor of the plaintiff and assess his damages at ten thousand dollars besides costs.

And now comes the said defendant and moves the court to set
23 aside the verdict heretofore rendered in this cause and grant a new trial herein, and for reason it assigns the following, to wit: 1. For errors of law by the justice presiding in his rulings during the trial. 2. For errors of law by the justice presiding in his instructions to the jury. 3. Because the verdict was contrary to the evidence. 4. Because the damages assessed by the jury are excessive and not justified by the evidence.

SATURDAY, *March 13th, A. D.* 1880.

Session resumed pursuant to adjournment; Walter S. Cox, justice, presiding.

* * * * * * *

E. W. DU BOSE, PL'FF,
vs.
THE DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749.

Upon argument of the defendant's motion to set aside the verdict heretofore rendered in this cause and grant a new trial herein, it is considered by the court that said motion be, and the same is hereby, overruled, and the court orders judgment to be entered on the verdict.
24 Therefore it is considered by the court that the plaintiff recover against said defendant ten thousand dollars for his damages as aforesaid assessed, and $51.35 for his costs of suit, and have execution thereof.

Motion for new trial on exceptions.—Filed April 21, 1880.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

And now comes the defendant, by its attorney, and files this its motion for a new trial on exceptions and notice of appeal from the decision

of the court overruling the motion for a new trial noted upon the minutes of the court.

FRANCIS MILLER,
Attorney for Def't.

Motion to amend the record.—Filed May 10, 1880.

In the supreme court of the District of Columbia.

25 E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

And now comes the defendant in the above entitled case and moves the court to amend the minutes and record so that the same may show that the defendant on the 13th day of March, 1880, took an appeal in open court from the decision of the court overruling its motion for a new trial on the ground of excessive damages; in support of which said motion the following affidavits are herewith submitted.

A. G. RIDDLE,
Att'y D. C.

SATURDAY, *May* 15, 1880.

Session resumed pursuant to adjournment, Walter S. Cox, justice, presiding.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

The motion of the defendant, filed May 10, 1880, to amend the
26 record in this case, came on for hearing, on consideration whereof it is ordered that the minutes of the proceedings in said case be amended as follows: "March 13, 1880. This day in open court came the defendant by its attorney, who noted an appeal from the decision of the court overruling its motion for a new trial on the ground of excessive damages."

* * * * * * *

E. W. DU BOSE, PL'FF,
vs.
DISTRICT OF COLUMBIA, DEF'T. } At law. No. 19749.

Now comes here the defendant by its attorney, and tenders to the court here its bill of exceptions to the ruling of the court on the trial of this case, and prays that the same may be duly signed and sealed and made a part of the record; which is done accordingly.

Bill of exceptions.

In the supreme court of the District of Columbia.

E. W. DU BOSE
vs.
THE DISTRICT OF COLUMBIA. } At law. No. 19749.

27 Be it remembered that upon the trial of this case the following

evidence and no other was submitted to the jury, by the parties, to maintain the issue on their respective parts, to wit:

The plaintiff, to maintain the issues on his part joined, offered and gave testimony to the jury as follows:

E. W. DU BOSE, the plaintiff, and witness in his own behalf, having been first duly sworn, was examined, and testified as follows:

By A. A. BIRNEY:

Question. You are the plaintiff in this case?

Answer. I am.

Q. Were you in the city in February, 1877?

A. I was; and when I got this fall I was coming from a Congressman's.

Q. Will you look at this plan (showing same to witness), and see if you recollect the locality where you received that fall?

A. Yes, sir; I do. It was on 13th street, near the corner of F. I was walking down from G street and I passed three (3) ladies
28 about midway the square, and turned to the left and walked on towards F, and I did not see this place [as it was dark*], and I fell, and it seemed to me as if a sledge hammer had hit me on the head. I could not get up, and a policeman helped me. He was a big man, and for five (5) minutes he could not raise me up; and when he did, he took me to a board, a few paces distant, where I sat down.

Q. You say you could not get up for about five (5) minutes. How were you sitting there? Were you sitting on the steps, on the pavement, or how?

A. He wanted to send me home in a hack, but I told him it was not far, and he told me——

Mr. BIRNEY (interrupting). Never mind what he told you then.

WITNESS. I know after I got a little over this, he set me up on one of those steps, and I stayed there a little while, and after a while he
29 wanted me to go to a drug store, but I told him I was a surgeon, and I went to my quarters'-room, and took a bath, and some chloral. I was in utter misery; my knees were wet, and I had heavy English trousers on, and they were cut, and my knee was bleeding; my hands were blistered, and my back was evidently concussed, and spine was more or less injured.

Q. How did you fall? How did you strike on the pavement where you fell?

A. I went right down on my knees and hands, and I went to my room, stayed there, and fixed myself in such a manner that I could take care of myself. I took a straight bath, and went away on the day the President was inaugurated, and went to Boston, and from there to Chelsea.

Q. You left here on the fourth of March?

A. Yes; I got in a carriage, a kind of conveyance, and rode down to the depot, and rode to Boston by crossing the river in a coach,
30 and I did not get out of it until I got to Boston.

Q. You have stated here how the left knee was cut, and the trousers cut across; how about the right knee?

A. It was contused.

Q. You went to Boston when you left here on the 4th of March?

A. Yes; and went to Chelsea, where I lived.

Q. What physician did you see in Chelsea?

A. Dr. Cutler.

* In pencil in the original.

Q. From Chelsea, where did you go?

A. I stayed there until the 12th of June.

Q. What was your condition while you were in Chelsea?

A. Very bad.

Q. Were you able to stir about?

A. No; I do not think I went about. I stayed with Mrs. Gloucester—they were friends to me—until June, and then went to Columbia, South Carolina, where a brother of mine had a plantation.

31 Q. In South Carolina?

A. Yes; Thomas C. Du Bose. I stayed there about a month and a half, but the climate almost killed me; my secretions and everything else was interrupted. I went to a colder climate; I took the Harrisburgh road from Washington and went up to Harrisburgh, and from there to Cincinnati, and there I got a good bath, and got into one of those elegant coaches on the Chicago and Saint Paul Railroad, as good a coach as there ever was, and I went to Saint Paul, and there I stopped over until Gen. Sloan, the medical director, ordered me, and I asked him, and he sent me to Alden Green.

Q. Prior to your injuries, what had been your profession?

WITNESS. Mine?

COUNSEL. Yes; what had been your profession in life?

A. Well, I was engaged as examiner for an insurance company.

32 Q. Are you a physician?

A. Yes, sir.

Q. Where had you practiced your profession, and in what general capacities, before your injuries—before you were hurt?

A. Well, I hardly had any profession; I was at many things.

Q. What was your profession, and in what business had you been employed? What was your occupation before you were hurt?

A. I was in various traffics.

Q. You have been a physician, have you not?

A. Yes, sir.

Q. Had you been in the Army before that time?

A. I went to an old place called Fort Romsa; I stayed there quite a little while, and I went to Fort Smoot, and I stayed there five (5) years.

Q. What was your occupation during that time; what were you doing?

33 A. I was in charge of the post, a small post. I was in charge of the post five (5) years.

Q. As Dr.?

A. As post surgeon.

Q. Had you served at New Orleans at all?

A. I was there and turned over my property when they broke up the department.

Q. They broke up the department and you went to New Orleans and turned over your property?

A. Yes, sir; that department broke up and I stayed there six (6) or eight weeks, and I went into the medical director's office about ten o'clock one morning and he put on his jacket, his seal jacket, and got up and said that he would see me again.

Q. Never mind about that. Then you had served as post surgeon in the Army at Fort Smoot?

34 A. Yes, sir; and at Cheyenne until the proper surgeon took charge, and Col. White, of the 11th, told me that I could make the trip——

Q. (Interrupting.) You were in the United States Army?

A. Yes, sir; I stayed at Cheyenne and was in New Orleans six (6) weeks. I stayed there pending my claim for commutations.

Mr. RIDDLE. Was that before or after?

A. After I was hurt.

Mr. BIRNEY. Was it after you were hurt you were in New Orleans or before?

A. After.

Q. What did you receive, what could you make, what could you get at your occupation before you were hurt?

(To which question the defendant by its counsel objected, but the justice presiding overruled the objection and permitted the witness to answer; to which holding defendant by its counsel excepted, and the exception was noted by the court upon its minutes before the
35 giving of the verdict herein.)

A. One hundred and twenty-five dollars and commutation, under my contract.

Q. One hundred and twenty-five dollars a month?

A. Yes, sir.

Q. And commutations?

A. Yes, sir; and traveling expenses.

Q. What did they allow you for that?

A. Ten cents a mile.

Q. Same as allowed other officers of the Army?

A. I made a trip from Washington, and I went to Saint Paul, and then——

Q. (Interrupting.) Wait a moment, I want to direct your attention to this: you were paid a salary of one hundred and twenty-five dollars ($125) a month before that?

A. Yes, sir; and commutations and ten cents a mile.

Q. That was traveling expenses. You received fuel, did you?

A. Not until I got to the post.

36 Q. Your salary altogether was fifteen hundred dollars ($1,500) a year; what was the allowance?

A. It depended upon the temperature; sometimes we got no fuel. If it was cold we had fuel, otherwise not.

Q. You received one hundred and twenty-five dollars ($125) a month; your fuel and travelling expenses?

A. Yes, sir.

Q. Did you receive rations?

A. No, sir.

Q. You have told us what your condition was after you re your hurt here in Washington, and afterwards at Chelsea; what was your condition, what was the condition of your knees and back when you were out in Saint Paul, was it better or worse?

A. I could not climb up stairs to go to my room.

Q. How does it affect you now with regard to your ability to stand for any length of time?

37 A. I cannot stand five (5) or ten (10) minutes.

Q Where do you suffer?

A. In my whole back and legs.

Q. How does it affect your ability to go up and down stairs?

A. I cannot do it.

Q. How is it about your being able to walk? Can you walk any distance?

A. No, I cannot.

Q. How are your legs affected?
A. They are affected in my knees.
Q. How does it affect them; are they stiffened?
A. I cannot cross them this way (indicating).
Q. You cannot cross them except by the use of your hands?
A. Not to save my life.
Q. Do you feel any pain in your back?
A. I can hardly turn myself in bed.
Q. Did Dr. Cutler examine you in Chelsea; you saw him, did you?
A. Yes, sir.
Q. When you went from here to Chelsea?
38 A. Yes, sir; I think he gave a certificate on commission, I mean testimony on commission.
Mr. BIRNEY. Yes, his deposition is in this case.
Q. How have the injuries that you received affected your ability to earn a living?
A. I do not see how I can make a living.
Q. You cannot get around at all, is that it?
A. Well, no, I cannot.
Q. Before you hurt yourself, before you were injured, what was your physical condition?
A. I was an active man.
Q. Had you ever been troubled by anything of this sort?
A. No, sir; no rheumatism.
Q. Not at any time?
A. No, sir.
Q. Had you ever been afflicted with anything that could in any way have been connected with these pains?
A. No, sir.
Q. Have you suffered much pain since you were hurt?
39 A. It is a fact that I cannot cross my limb.
Q. Then that causes you pain?
A. Yes, sir.
Q. Does it cause you pain to walk?
A. A little; I will tell you. The other day, some two (2) weeks ago, I raised up in the hall and fell right on the floor.
Q. That was in the hallway?
A. Yes, sir; and Mr. Higgins of the ward and others came and took me up. I got out of the rocking chair and tried to raise myself, and I fell right on the carpet.
JUROR. I would like to know how long after he was hurt before he left the city?
A. On the fourth of March.
Mr. BIRNEY. Did you consult any physician here after you were hurt?
A. Nobody.
Q. After you were hurt and before you left Washington, were you treated by any Dr., or did you treat yourself?
40 A. I simply treated myself with camphor liniment.
Q. You did not call any other Dr.?
A. No, sir.
Q. Then when you reached Chelsea you consulted Dr. Cutler?
A. That was a long time after that.
Q. After you were hurt, and before you left Washington, which was about ten (10) days—about fifteen (15) days—did you call any other Dr. to examine you at the boarding house where you were?

A. No.

Q. You are a regular educated physician, and have served as you testified for five (5) or six (6) years as surgeon?

A. Yes, sir.

Cross-examination by A. G. RIDDLE:

Q. Where were you educated as physician?

A. I went to school in Savannah.

Q. Did you graduate there?

A. Yes.

Q. When did you graduate there?

41 A. I was young.

Q. But you remember when it was, don't you?

A. No.

Q. Where did you go to practice your profession from there?

A. In the country.

Q. When did you first become surgeon in the Army?

A. Yes.

Q. You say you were a surgeon in the Army before this accident; I want to know when?

A. About 1872. The dates are in the Surgeon-General's.

Q. How long had you been in the service before this accident—how many years?

A. About six (6) years.

Q. How long had you been out of the service before you met with this fall?

WITNESS. In the service——

Mr. RIDDLE. How long a time intervened between your leaving the service and the time of this fall? You say that the accident

42 happened on the 21st day of February. Now, before that time how long had you been out of the service?

A. I was ordered to surrender patients at Livingston, Alabama, with my hospital supplies, and they broke up the department.

Q. (Interrupting.) Yes; but I want to know what time that was. Was it several months? How long a time had you been in Washington before this accident?

A. Only a day or two.

Q. I asked you how long you had been in Washington before you met with this accident?

A. I do not know how many days.

Q. Where did you stop here in Washington?

WITNESS. Where did I stop?

Mr. RIDDLE. Did you stop at a hotel or boarding-house?

A. I was at a house No. 919 G street. The people are not there now.

Q. Did you go to that place after you met with this accident?

43 A. Yes.

Q. You went there alone?

A. I went there alone.

Q. Did a policeman go with you?

A. No.

Q. Did anybody go with you?

A. Well, he did not go far.

Q. Who?

A. Policeman.

Q. Did not the policeman want you to go to the drug store to be treated?

A. Yes.
Q. And you refused to do it?
A. Well, he could not do anything.
Q. You went home and treated yourself?
A. I did.
Q. How long did you stay in Washington after the accident?
A. I stayed there until the inauguration of President Hayes.
Q. Then you went away. What time was it that you arrived in Chelsea—Boston and Chelsea?
44 A. I went there in a coach that left here just as soon as the President was inaugurated.
Q. Did you go to the inauguration?
A. No; I could not go. I went down to the depot and I got in a coach and went clear through to Boston, and then went to Chelsea.
Q. How soon after you got there was it before you called this Dr.?
A. Immediately.
Q. How long did he attend to you?
A. He attended to me while I was there.
Q. How long was it; don't you know?
WITNESS. When was the inauguration of President Hayes?
Q. You went away from here when the President was inaugurated and went to Chelsea and employed this doctor; how long did he have the care of you?
A. Until some time in June.
Q. Then you left there and went West?
A. No.
Q. Where did you go?
45 A. I went to South Carolina to see my brother.
Q. You were well enough to travel then?
A. It was too hot down there, and I went from there to Chelsea.
Q. Did you go back from South Carolina to Chelsea again?
A. Yes.
Q. When you got back to Chelsea that time, what time of the season was it; was it fall or winter?
A. It was summer.
Q. How long did you stay there that time?
A. I stayed there until I got a new contract, in December.
Q. Then you left Chelsea and went to perform the new contract?
Mr. BIRNEY. I don't think he said he went back to Chelsea a second time.
Mr. RIDDLE. Yes, he did. Did you go from South Carolina back to Chelsea?
46 A. Yes; I went back there because I could not live in the hot climate.
Q. What time of the night was it that you fell?
A. About nine o'clock.
Q. Where were you, on your way from your boarding-house when you met with that accident?
A. Yes.
Q. Where were you going?
A. 919 G st.
Q. But you were going from that?
A. I was going from a lawyer's; a lawyer sent for me to come and see him.
Q. What lawyer?
A. Mr. Whittmore.

Q. Were you on your way to see him?
A. I had been there and heard a statement that he had made.
Q. When you were on Thirteenth street, just after you received that fall, where were you going; where would you have gone if you had not have fallen?

WITNESS. Me?

47 Mr. RIDDLE. You; nobody else in the world. I believe I will dismiss this witness for the present. Why do you not use crutches?

A. I used to use a stick.
Q. Yes, I know; why don't you now?
A. I can get along without a stick.

J. J. BLACK, a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

By Mr. A. A. BIRNEY:

Am a member of the Metropolitan Police, and have been for seven (7) years. I recognize the plaintiff, having seen him once before; saw him in February, 1877. I went on my beat at 6 o'clock the evening of the accident, and between 6 and 7 was on the corner of 13th and F N. W. talking to a man, and I saw Dr. Du Bose coming along from G street towards F on 13th on the east side; he was then on a part of the pave-

48 ment. This is 13th st. (referring to map of locality shown him by counsel), and this F, and that the roadway, and this the sidewalk. I first noticed him about there. There are a row of houses there with bay-windows, and they were all lit up, and as he passed along there some ladies were coming in the opposite direction, and he moved nearer the building line to let them pass, and they walked on towards G street, and he came along walking along this side walking here, near the houses; and he was walking along this elevation until he came along here, where there was a couple of steps, and he fell down headlong on the pavement, and I ran across the street and picked him up, and I asked him whether he was hurt much, and he said he was about his knees; he did not appear to make much of it. I asked him if I should go and get a doctor for him—carry him to a drug store and get a doctor

49 for him. He says no. I am a surgeon myself; he said he was either a surgeon in the Army, or surgeon, it has been so long ago. I then offered to get him him a hack, but he would not accept it, and he said he could make out to get along, and I did not think he was much hurt, so I made no report of it until an inquiry came from headquarters who the officer was; I reported that I was the one. He fell headlong over the elevation; there were lights in all the houses; I don't believe that there were any street lamps lit, from the fact that the place where he fell was dark; but I could not swear positively about the lamps as to whether lit or not; there was no light in the store on the corner that night; there was no light on the particular place where he fell.

Q. During the time that you were on the beat there did other accidents happen at this place?

50 (To which question the defendant by its counsel objected, but the justice presiding allowed said question to be asked the witness for the purpose of showing the condition of the street and the liability of other persons to fall there, and overruled the objection and permitted the witness to answer, to which holding defendant by its counsel excepted, and the exception was noted by the court upon its minutes before the giving of the verdict herein.)

A. I have seen parties stumble over there. I remember of sending a woman home in a hack who fell there. I have seen as many as five (5) fall there.

Cross-examination by A. G. RIDDLE:

There is a lamp standing right in front of those steps; there is a lamp on the southwest corner of 13 and F N. W.; there is a lamp on the west side of 13th; there is a lamp on the corner of 13th and G; there is a lamp on the northwest corner of F and 13th; one lamp is directly opposite this place; when lamps are lit it is a very
51 well-lighted place; one of the best lighted places in the city; don't know the names of the persons who fell down these steps; as to the time when they fell, I could only say, in a general way, that it was during the time that I was on duty there; I know who one of the parties were who fell down over there—a man by the name of Weeks, who lives back of Stewart's castle; it was after 12 o'clock at night. I could not tell whether he was drunk or sober; he had been drinking; the corner of 13th and F is one of the most frequented corners, and one of the most central points. I must have been on that beat somewhere near a year and six (6) months; it was about 9 o'clock when the young lady fell over; if the lights were lit I don't suppose there would be any danger to a person walking along; do not know who the young lady was; I do not know who else I have seen fall there; I remember several other occasions; I cannot give one; I am rather inclined to think
52 that the lamps were not lit on the night of the accident; I don't remember of telling Dr. Wallace that they were; I had a conversation with him; I don't remember how long after the accident it was; I would not swear whether it was lit or not; I will not say that I did not tell Dr. Wallace that it was lit; if I did tell him that it was, it is a pretty sure sign that it was; it was after I talked with Dr. Wallace that I talked with Mr. Birney about the case. I was standing on the northwest corner of 13th and F when I saw the man, nearly opposite the place where the accident happened; when I first saw him he was proceeding from G to F on 13th st.; he was about a half a square from the place where he fell when I first saw him. With reference to a fence that was on the east side of 13th, bet. F and G, and about 17 or 18 feet from the building line, Du Bose had passed that when I first saw him; it was a
53 mere accident that I saw him; I was talking to a man; I don't remember what I said to him, nor what he said to me; he was not watching Dr. Du Bose; I did not say there was a man going along, nor did he say it to me; he met the ladies just before he got on the elevation, and turned to the left; I do not know that it is a rule to turn to the right; he took the inside of the pavement, and the ladies the outside; he certainly turned to the left; I did not watch him, but I saw him all the way til' he fell; he was walking an ordinary gait; I don't know that he had anything in his hand; he might have had a stick; no one with him; I do not know that he met any one after he passed the ladies and before he fell; it was about in the middle of that step, I judge, where he fell; between the edge of the elevation and the wall of the house it is about seventeen (17) or eighteen (18) feet; he fell
54 off midway this elevation, and from the time he left the ladies—let them pass—he must have deviated about twelve or fourteen feet towards the buildings; from the curb-stone to the building line is nearly thirty (30) feet; he would not let me call a physician, nor yet let me go home with him; I picked him up; I helped him along a little

ways towards the drug-store; I do not know where he went after I left him; I don't suppose he told me where he was going; I don't believe he told me where he was stopping in the city; as soon as I found that he did not need my assistance I left him; I did not notice anything peculiar about him; I never saw him before the accident.

Redirect examination by A. A. BIRNEY:

I have seen other persons than Dr. Du Bose fall over there who were not intoxicated; a person not intoxicated could have fallen over
55 there. I did not see any signs of intoxication about Dr. Du Bose that evening.

W. W. GODDING, a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

By Mr. ARMES:

Am Superintendent of the Government Hospital for Insane. I know Dr. Du Bose; have seen him this morning. I first saw him in the early part of July, 1879. I saw him at the government hospital; St. Elizabeths. He was brought there by order of the Commissioners of the District and was at that time affected with acute melancholy, having wounded his throat with a fork. He was admitted to the hospital 3d July, 1879, and I examined him that night or the next day; am not positive. I think he was received by my assistant. The condition of the case was one of deep depression, and it was hardly possible to get a word
56 from the doctor; he moved with difficulty. I observed a loss of motion. That condition of depression remained for some two (2) or three (3) months, maybe more, and the doctor would answer me in monosyllable, or answer me in two or three words in talking, but gradually, I cannot say exactly as to dates, but gradually he began to talk more. I thought when I first saw him that he had lost complete control of the muscles of the organ of speech. He walks with difficulty; takes steps with difficulty. He walks on an elevation with a certain amount of hesitation; always a difficulty in ascending stairs. From depression he became quite pleasant, smiling and talking, and with it a disposition to take the papers and read some or to attempt to read. I think the case has nearly been stationary in that respect for the last two (2) or three (3) months. A easier articulation, or if not an easier articulation a greater grasp of the mind, which enabled him to use the words and
57 converse, but a mind easily confounded, easily made to give contradictory statements; memory impaired to a considerable extent. Certainly in regard to recent events my impression from the history of the case—it is not a matter of personal knowledge—is that the man suffers from a paralysis of the lower extremities; a partial paralysis was apparent and a general impairment of the muscular powers, and an impairment of the strength of the back and the spine, and more marked in the lower extremities. The conclusion, then, that I come to in regard to the mental trouble was that it probably originated, directly caused, from the partial paralysis which was apparent when he first came under my personal observation. There was paralysis and impaired intellect both existing from facts anterior to that. There was no especial injury that I observed personally to the limbs or knees that may be attributed the peculiarity of his gait. As to the prospect of recovery of Dr.
58 Du Bose from his present condition, I can give you my opinion in he matter, that I do not expect, beyond slight improvement, any change for the better. I do not think it would be safe to relieve him

from the custody of the officers of Saint Elizabeth Asylum to go out alone. I do not know that there is any active insanity that would make him dangerous to others, but he should be in the care of some person wherever he is.

Q. Suppose a man of ordinary physical capacity should fall over a precipice about two feet high, two feet or less, fall upon his knees and forward upon his hands, and fall so hard as to cut through a pair of pantaloons that he had on and bruise his knees, that he should suffer pain in his knees, and fall upon a brick pavement, could a fall of that kind produce ultimately such a condition of mind and body as you have described in Dr. Du Bose?

59 A. Yes, sir; it might be so. If I knew of no other cause to which to attribute such a condition of mind and body, I should attribute it to the fall. Such a condition of mind would not necessarily follow immediately after the fall.

Cross-examination by A. G. RIDDLE:

The chances are that not one case in ten (10) would the result of such an accident be as it is in this case. I should expect it more frequently than one in a thousand, but it is not in my experience a common result. It is a speciality with me to treat persons of diseased intellect, and I might qualify my other statements that I am not probably an expert as a surgeon, but the ultimate result is what reaches me; that is, the ultimate result where it impairs the intellect. I don't recollect a case to have fallen under my observation resulting as this has by a fall
60 on the sidewalk, but a fall producing concussion of the spine, which I consider the disease here—the primary trouble. I think I speak within bounds in saying that I have seen a half dozen. I have been for a number of years engaged in the treatment of patients in an insane asylum. In text-books of reported cases, the relative number of that kind of injuries from similar falls is probably small. I attribute this injury to the spine primarily. The very fact of falling in some way does act primarily on the spine. I never knew the doctor before he fell under my care. He is reported on our books as forty (40) years of age now. I have no acquaintance with his relatives, or those who knew him anterior to the time of the accident. I got the statement from the doctor. So far as my investigation has gone, I have been unable to find any cause that might have acted with this fall to
61 have produced the Dr.'s present unhappy condition. So far as I have been able to investigate the case, I have found no other cause sufficient to account for it, that could in any way have a bearing upon it, except possibly the exposure that an Army surgeon has in the life following a camp.

I have had the ordinary education of a physician and surgeon. If the patient had been brought to me with the description given, I would, as a physician, have addressed my attention to find out whether any bones were broken, and if there was any injury to the spine. I think that good surgery would have required some attention to the spine. I think a prudent surgeon would have advised rest in bed for two (2) or three months or to remain quiet. Looking at the case in the light that I know now, I should think that it would have been the best thing for the patient to have had some period of quiet rest. I am not sure that the injury done
62 was immediate, but should say that anything like active exercise should have been enjoined for some weeks. I would say, in behalf of the profession, that a person injured as the doctor was on the 21st of February, and remaining here till 4th of March without calling

in a physician to care for him, might feel, being a physician and not being injured in his head, that he was a good judge of his own case. I do not necessarily regard a physician as an expert in his own case; I think he is, to a certain extent, an expert in his own case; he might be injured in a way that he could not attend to himself. In my judgment the practice of his profession as an Army surgeon would be one that would be likely to aggravate the difficulty—I mean personal exposure. With reference to his mental condition, he was laboring with acute melancholy when he reached me. The present condition of his knees
63 is normal; there is no displacement; there is a weakening of the muscular organ and weakness of the nerve power; the difficulty is especially with the spine; there is no injury to the knee that has produced anything permanent. I do not to-day regard him as a man of sound mind; his memory is impaired; the memory of recent events probably more so than those occurring years ago. I think his testimony in an important matter should be taken with the allowance made that the man is not of full vigor and strength of mind; my own belief is that he is able to make a substantially correct statement of facts transpiring before the mental injury took place, but that the memory is so far impaired that he might leave out some important point; there would be a confusion of ideas. I do not think that he should be held responsible for any criminal act committed by himself. The statements upon
64 which I give my opinion I got from the Dr.

Redirect examination by Mr. ARMES:

I do not see anything in the present condition of Dr. Du Bose to indicate that his present condition could be attributed to exposure in the Army, or that he had suffered in the Army to such a degree as to cause his present condition.

Recross-examination by A. G. RIDDLE:

A warm bath, if taken immediately after the receipt of the injury, would have had a favorable effect by bringing the blood to the surface, helping circulation; a cold bath, the first effect would not be so good, but the secondary effect would bring back a reaction.

By Mr. BIRNEY. There is a difference of opinion among physicians in regard to the advisability of such treatment.

65 Mr. SMITH, a witness on part of plaintiff, having been first duly sworn, was examined and testified as follows:

By A. A. BIRNEY:

Employee of the Washington Gas Light Company; records of the company show that on the 21st of February, 1877, gas-lamps were commenced to be lit at 11.30 p. m., and extinguished at 4 a. m.; they commenced to light at 11.30 p. m.; none were lit before that.

Cross-examination by A. G. RIDDLE:

The record shows moonlight up to 11.30.

Redirect examination by A. A. BIRNEY:

I do not know whether it was a cloudy night or not; we have forty (40) lighters; don't know where the lighter starts from who lights the lamps corner of 13th and F; each man is allowed three-quarters of an hour to light his lamps.

66 JOSEPH C. ROCK, a witness on part of plaintiff, having been first duly sworn, was examined and testified as follows:

By A. A. BIRNEY:

Chief clerk of the engineer department of the District of Columbia; I know the locality of accident; pavement as it now exists made by board of public works in fall of 1873; the final measurement of work done was December 5, 1873; the work on 13th was commenced before that on F, and was done by Patrick [Crowley, in pencil], and improvement ran from F to N st.; he commenced in 1871, and in the neighborhood of the intersection F and 13 was completed some time in the summer or fall of 1872. Now, as to F street, in 1873, the board of public works awarded a contract to Cranford and Filbert, and it was necessary in the improvement of the street and that of 13th to get the grade
67 down at the intersection, and it necessitated taking up the original pavement on 13th for one-half a square from F towards G, and right in the center of the square bet. F and G there was a kind of a hip, and in cutting down the footwalk on the west side of 13th between F and G a lady, Mrs. Joyce, came down to the board of public works and complained very bitterly because the board intended to cut it down, and I suppose it was because of her objection that it remained as it now is.

Cross-examination by A. G. RIDDLE:

Don't recollect of any complaint having been made of the place of the accident as a dangerous place.

W. A. WAYNE, a witness on behalf of plaintiff, having been first duly sworn, was examined and testified as follows:

By Mr. ARMES:

I know the plaintiff; first met him in the winter of 1875, or in
68 December or January, 1876; have met him two (2) or three times since; up to about 1877 he was a very robust man; I suppose he weighed about 165 or 170 pounds; he seemed to be in good health when I first knew him, and very stout and robust—no impediment in his power of locomotion that I observed.

Cross-examination by A. G. RIDDLE:

I think he had no impediment in his speech; it is my impression that he spoke as the ordinary man does; that was in the winter of 1875 and '76; I next saw him in the winter of 1876 and '77; I met him on the streets one time after he received this injury, just before the accident and just afterwards; I think I met him at the Imperial Hotel.

By Mr. ARMES:

I see him in the court-room now.

69 Mr. LONEY, a witness on the part of plaintiff, having been first duly sworn, was examined and testified as follows:

By A. A. BIRNEY:

I know Dr. DuBose; knew him in the winter of 1876 & '77; knew him at 919 G st., where he was boarding; I lived there also; I knew him from 4 to 6 weeks before the injury; his physical health was apparently good; he had no impediment in his walk; knew him quite intimately during that time; I saw him frequently; was with him nearly every afternoon after dinner, when we would walk together; power of endurance very good; mind apparently very good. I saw him the following afternoon after he was hurt; he told me that he fell at 13th and F; he uncovered his knee and showed me an injury to one of his knees; for-

get which one; it was a small injury—about the size of a silver
70 dollar; it was a contusion, bruised blood beneath the surface of the skin; I only remember of seeing one knee; don't remember of seeing both; don't recollect of seeing the pantaloons that he had worn the night of accident; remained in the same house with him until he left Washington, and during that time he said he suffered considerable pain in one or both knees, and he said the concussion produced by the fall was quite severe. He did not tell me concussion on what part of his body. I did not see him off from the city. Since that time I had not seen him until day before yesterday in this room. There appears to be a great change in his condition now as compared with it before the inquiry, both physical and mental.

Cross-examination by A. G. RIDDLE:

He remained here a few weeks after he received the injury
71 before he left the city; I think it occurred in February, and I believe he left on the morning of the 4th of March; think he had some business with the War Department at the time; I don't think he got around as usual for a few days after he received the injury, but I think he remained home; I suppose he was confined to the house during that time; he did not complain of his back, but he complained of his knees and showed me one of them; he complained of feeling as though he had been shaken up.

Redirect examination by Mr. ARMES:

His habits were very good.

A. HUDSON, a witness on part of plaintiff, having been first duly sworn, was examined, and testified as follows:

By A. A. BIRNEY:

72 I reside in Washington; am surgeon in the Navy, and at present on duty in the Navy Department; know the plaintiff; my acquaintance began with him in 1871; he made a cruise with me in the capacity of apothecary, on board of the [Wooster, in pencil]. We left in March and returned somewhere about September. He was a man at that time of good physique and vigorous health, more than ordinary physical capacity. I remember a circumstance by which I can well judge of his physical ability; we sailed from Boston with a cargo of provisions on board, for the purpose of carrying them to the French after the fall of Paris; after two (2) or three (3) days out from Boston, we had an explosion by which a large number of the men were scalded, and constant attention in care and treatment of them was necessary,
and Dr. Du Bose was on duty constantly, and his strength and
73 vigor seemed to be much more than mine, and at times when I was compelled to go and take rest, he would remain on duty; I found him a competent assistant in his capacity; I did not observe any defect in his speech; he was a man of ready speech.

Cross examination by A. G. RIDDLE:

That was in 1871, and I have never seen him from that until I saw him in the court-room.

The deposition of WM. C. CUTLER, a resident of Chelsea, Massachusetts, and a witness on behalf of plaintiff, was here read of A. A. Birney, counsel for plaintiff.

1st interrogatory. State your name and residence.

Answer. William C. Cutler, Chelsea.

2d int. State your profession, business, or occupation, and how long it has been such.

A. Physician and surgeon, about (20) twenty years.

74 3d int. Are you acquainted with one Emory W. Du Bose? If so, how long have you been acquainted with him, and what was his profession, business, or occupation, during your acquaintance with him?

A. I am; I have been acquainted with him about ten (10) years. His profession during that time has been that of a physician and surgeon.

4th int. State, if you know, what the condition of said Du Bose was, mentally and physically, up to about the 21st day of February, 1877, and prior thereto, during your acquaintance with him.

A. Perfectly sound, mentally and physically.

5th int. State, if you know, what the physical and mental condition of said Du Bose has been since the 21st day of February, 1877, or thereabouts. If he has or has had any infirmity, state what, in your opinion, it is or was; and describe as specifically as you can, the character, nature, and locality thereof, and about the time the same,

75 if any, originated; state also the opportunity you have had of acquiring information as to such facts, if any you are able to state in the premises.

A. I have treated him more or less of the time since February 21st, 1877, and therefore know his condition to be that of a confirmed invalid. He came under my treatment in a few days after a fall which he had in Washington, D. C., suffering intensely from inflammation of the knee-joints. He was unable to walk about the room without support. On examining his knees I found contusion to a considerable extent upon them both, together with an enlargement, incident to an accumulation of synovial fluid, which, together with bruises, showed it be the result of an injury of recent occurrence. At this time he also complained of severe pain in back and head and inability to retain his urine. His gait was a trifle unsteady, with a tendency to drag the ball of his foot. Upon examination of his spine I found tenderness in both cer-

76 vical and lumbar vertebræ. I had been in regular correspondence with Dr. Du Bose during the time he was away from Chelsea, prior to February, 1877, seeing him often both before that date and since.

6th int. Has said Du Bose been in Chelsea, Mass., all or any portion of the time since February, 1877; if so, when was he first seen there by you after that date, and how long did he remain in Chelsea?

A. He has been in Chelsea on two occasions since February, 1877. The first time during February, March, and first part of April, 1877, immediately after his injury; then again in April and May, 1879.

7th int. Did said Du Bose leave Chelsea after the month of February, 1877? If so, state, if you know, where he went, in what business or capacity; and if he returned to said Chilsea, state when he returned; and, if you know what his mental and physical condition was after such return, state what it was; and if any infirmity or disorder existed,

77 state the character, nature, and locality thereof, and your opinion as to its origin.

A. I think he left in the month of April, 1877, and for a time stopped in Saint Paul. Not long after this I had a letter from him dated at Dakota, being then in the Army; at this time he stated that his spinal irritation was so troublesome that he feared he should be forced to leave the Army, and was finally compelled to in September, 1878. After leaving the

Army he attempted to do office practice at Saint Paul (not being able to attend out patients), but finally was forced to give that up and returned to Chelsea in May, 1879, in a condition very much worse than I last saw him, had less ability to use his limbs, having a tendency to paraplegia, complained of pains and heat in back and head, with tenderness in cervical and lumbar vertebræ. His intellectual faculties showed evident signs of failing, he became fretful and angry at trifles, he seemed
78 to have lost all idea of time and was forgetful. All of which symptoms I believe to have resulted from organic changes in the spinal nerve from which he will never recover.

8th int. State when you last saw said Du Bose, and whether or not his condition was at that time the same as you have described in answer to interrogatory No. 7, or similar thereto, and state what you know as to his whereabouts since that time.

A. I think it was in May, 1879. His condition was much worse than when I saw him at time he came to Chelsea before. Since this I have heard from him once, and then he was under treatment in a hospital in Washington, D. C., and had been there much of the time since leaving Chelsea.

ALEXANDER JACKSON, witness on part of plaintiff, having been first duly sworn, was examined, and testified as follows:

79 By A. A. BIRNEY:

I reside at 621 13th st., between G and F. I know the condition of the pavement between F and G on 13th; there is a precipice in the pavement about two feet high, which projects some twenty-four (24) feet from the building line and stops at about twelve (12) feet from the curb.

Q. I will ask you how that place is regarded, dangerous or otherwise?

(To which question counsel for defendant objected.)

COURT. Ask him what he knows about it.

Q. What do you know about any accident having occurred there?

A. I have no personal knowledge of any accident having occurred there; the place is not guarded at all, neither on the side or at the end; nothing to prevent a person from falling down there.

80 Cross examination by A. G. RIDDLE:

There is nothing to prevent a man from falling down there.

H. W. GARNETT, a witness on part of plaintiff, having been first duly sworn, was examined, and testified as follows:

By A. A. BIRNEY:

Am attorney at law of this court; know the intersection of 13th and F sts., and have frequently passed there; I know the elevated part of the sidewalk there; about two (2) years ago, on one occasion, I saw a young lady who was walking along on the west side fall on top of the place but did not fall down there; she was not hurt.

Cross-examination by A. G. RIDDLE:

I suppose it was between seven (7) and eight (8) in the evening; it was just about dusk; it was before the lamps were lit; there is
81 a lamp at the corner of F and 13, n. e. corner, and one on n. w. corner; and a lamp at corner of 13th and G, and on 13th st. there is one midway between F & G.

GEORGE W. BLACK, a witness on part of plaintiff, having been first duly sworn, was examined, and testified as follows:

By A. A. BIRNEY:

Clerk in Pension Office; live in neighborhood of place spoken of; reside at 1306 G st.; I know the elevated places on each side of 13th street; I fell over this elevated sidewalk on night of 17th of September last and was severely hurt; hurt myself in the shoulder and have been lame in my arm ever since, stiffened in my right arm; I will never be able to get my arm higher than that (indicating); it was about half past eight; I was going from G street to F:

Q. Have you ever known any other persons to fall there, Mr. Black?

82 (To which question the defendant, by its counsel, objected, but the justice presiding overruled the objection and permitted the witness to answer; to which holding, defendant, by its counsel, excepted, and the exception was noted by the court upon its minutes before the giving of the verdict herein.)

A. I have heard of them, I have heard of two or three; Mrs. Reeves' mother, I understood, fell over there.

Cross-examination by A. G. RIDDLE:

I don't known precisely; I think perhaps about half past 8; I did not see any lamps lit; there might have been; I do not know that there was; I was very familiar with the place; I had been by there a great number of times before that; I knew what it was and I was generally pretty careful about it.

And here the plaintiff rested.

83 Thereupon the defendant, to maintain and prove the issues upon its part joined, gave the following testimony and none other:

W. T. C. BRUFF, a witness on part of defendant, having been first duly sworn, was examined, and testified as follows:

By A. G. RIDDLE:

Draughtsman in the engineer department in the District; made a diagram representing this place on the east side of Thirteenth street near F on the 20th of February; the greatest height of the place where the man stepped off was one foot ten and a half inches; there are three (3) steps; the distance from steps to lamp, 48 feet.

Cross examined by A. A. BIRNEY:

The steps are pretty old; they have sunk some.

84 WM. F. WALLACE, a witness on part of the defendant, having been first duly sworn, was examined, and testified as follows:

By A. G. RIDDLE:

Am one of the inspectors of streets and have the looking after of improvements going on, &c.; have been employed in that position since 1871, and during that time I have never heard any complaint of the dangerous condition of 13th street near F, where this accident took place; if there had been any it would have been referred to me. There is a railing which ran along on the east side of 13th st., just south of G, along the first house, and it is a guide for a person passing around this 12-foot pavement. The houses adjacent to these steps were all occupied in 1877.

After this accident a communication was referred to me by the engineer to examine this place and make a report, and I saw officer Black about it, and he told me that he was present there at the time of the
85 accident, and that the lamps were lit there that night. I made a report of that fact, and it appears in my report; I made my report on May 7, 1878, and I saw officer S. J. Black about a week previous to that.

Cross examination by A. A. BIRNEY:

I have never received any complaints of this place; there was none previous to the complaint on account of this accident, which was referred to me by the Commissioners, and I made an investigation and made this report; it is now in the same condition that it was at the time of my report; the pavement is paved all the way up to these steps.

At this point in the case, counsel for the defendant suggested to the court that the testimony of the plaintiff should be taken away from the jury, and also that there was not a proper party plaintiff before the court.

86 C. B. PURVIS, a witness on the part of defendant, having been first duly sworn, was examined, and testified as follows:

By A. G. RIDDLE:

Am a practicing physician and surgeon; have practiced my profession between 40 and 50 years; am a graduate of a medical institution in Cleveland, Ohio; I have been connected with the Freedman's Hospital for some years. Dr. Du Bose, the plaintiff in this case, was a patient of mine at the hospital; I think in June, the latter part of June, 1879; he was a patient of mine for a little better than a month; when I first saw him I was going through my ward, and he was in one of the rooms. I think that there was about a dozen or more patients in that room; when I reached him I found him sitting there rather rosy in the face, and I attempted to find out what the matter with him was, and I thought he was a little unwilling to communicate any
87 fact to me at all; I could not get any satisfaction out of him at all; he seemed to dwell more upon the fact that he was disgraced by coming to that hospital; the next day I moved him to another room, private room, where I made him as comfortable as possible by giving him extra things, such as a basin, towel, &c., then I got out of him something of his malady; I found that he had a stiff, shuffling kind of a gait. By talking with him he hesitated in speech, as if lost for a word; that was quite constant with him. I did not prescribe for him. While he was under my care, he was not willing to be examined, and was not willing to take any medicine. He informed me early, the first or second day, that he was a physician, and he did not care to be treated. At the time I first saw him, I thought he was something of an impostor. I first thought that because he seemed to be laboring
88 under an embarrassment and mortified from the fact that he was in our hospital. He did not like the idea of being in a colored hospital. I think I was several days getting his history out of him. I watched him carefully, to see if he was imposing upon me.

After I put him in this room, I gradually got out of him his history. He was here, he said, for the purpose of prosecuting a lawsuit. He told me how he had hurt himself. He said he was walking along 13th street, and walking on the sidewalk, and fell—he never told me how he

fell—and, as the result of that his injuries came. He is paralysed in the lower extremities. He attributed his physical condition to that fall and injury, and he told me that he was here for a lawsuit, and I think it was the week following before I got that out of him. I don't think I ever made a thorough examination of him. I don't think he ever
89 would allow me. I went once or twice to examine his spine, but he would not permit me. He said he had been to one of the leading physicians in the country. He would not let me do anything. He became very morbid about being in that hospital, speaking about his love affairs, and at last he entreated me to bring him books to read, and to give him the privilege of going wherever he wanted to go, and he wanted to be moved from that building to a brick building, that being more of a private building. Two (2) or three (3) days after that, he attempted to commit suicide. I tried to get him to go down with me to see his attorneys; I did call on them, but they were out. I thought his mind was becoming affected; I thought he had better be moved; I think I tried to coax him; but he had an idea that his creditors were after him, and he complained constantly of his poverty; he became insane and attempted to commit suicide; I saw him about an hour
90 before; the next day I saw him, and we sent him away. At that time, as a medical man, I would say that he was insane, and attempted to commit suicide. He took a fork and stuck it into his neck several times; his food was brought to him, and his fork was on the plate; it was not very serious. A man seized his hand at the time; but he did a little damage; he seemed to know where to strike, though; he had judgment enough to know where a vital part could be reached.

I have not seen him since. At that time he was insane. This was towards the end of June, 1879. He went from there ultimately to the insane asylum across the river. A man of the plaintiff's age and size falling down 3 steps of the height of those on 13th street west, near F, and striking upon his knees, and falling upon his hands, in my judgment, I would have naturally expected a fracture of the wrist; that would
91 the most natural thing in the world, as a rule. I would not have expected any other injury, except a contusion. I would not have expected injury to the spine; it is possible, and is the exception to the rule; it is customary to expect fracture to the arm. The proper treatment would have been perfect rest, that being the principal treatment. Then he should have been subjected to other treatment if there was a simple concussion. A severe injury to the spine will show itself at once.

Q. Now, Dr. let me give you this case—I will assume that between the time of the injury which was the 21st of February, the patient took charge of himself, being a surgeon; he remained about town here; we do not get a very intelligent idea of what he is doing, and was confined to his boarding house and remained here until 4th or 5th of March, when he made a trip to Boston; we may assume that he had some injury to the spine, but that that had not developed itself, what would you
92 have deemed it necessary under the circumstances?

A. I would have deemed it necessary to have kept that man in a quiet condition for 6 months or a year; plaintiff knowing the nature of his injury, he should not, I think, have done anything—engaged in any employment. I could not tell from what I know of the history of this case that this spinal injury could be traced directly to this fall. I would have to know more about the history of the man, his habits of life, and tendency to insanity in the family, &c. I think it is the exception for a man who received an injury to the spine to become crazy; in a majority

of cases I do not think that any serious consequences would have resulted from the injury if he had kept himself perfectly quiet for 3, 4, 5, or 6 weeks; I think absolute quiet would have improved his con-
93 dition and might have prevented any other serious result; it would have been a preventive treatment certainly; the effect of exposure to the cold while on the frontier acting as an Army surgeon would have aggravated the case; it should have been avoided; if he had exposed himself and caught cold it would have been a great deal worse.

Cross-examination by A. A. BIRNEY:

As to whether I should predict that absolute quiet after the injury would have produced certain recovery would depend of course upon the extent of the injury; that should have been the treatment, however; it is not true that in a majority of cases where serious injuries ensue they are not developed until some time after the injury; there are cases where they do not result until some time after the injury; a person coming under my treatment who was a strong, healthy man, sound of body
94 and mind and I should learn that he had in that condition fallen off a place similar to that on 13th street, a distance of about two (2) feet and had struck on his knees and after striking on his knees had fallen over on his hands and had experienced great pain in his knees I should say that concussion of the spine might result or it might be a fracture; the spinal chord is considered a function of the brain; the effect of the shock done to the spine is experienced by the brain; if a man should have received such a fall, I would not, in my examination of him have thought there was injury to the spine, and would not have examined the spine unless he complained of it; if I found no injury to the arm, no wrists being broken, I might possibly make inquiry for injury to the spinal chord; if he complained of it I should certainly examine that part, it is such a common thing for a man to tumble down that we do
95 not attach much importance to it. I have know'a boy to be killed at a less distance by alighting on his heels, a man is very apt then to receive direct spinal injury; would not likely receive such an injury from falling on his knees; if a man should stumble over a place of that sort, fall over it, he would naturally strike on the ball of his foot; if he went over both feet it would prevent any concussion; knowing his condition and that he fell (3) years ago and knowing the sensation which he experienced immediately after the fall, I would not like to attribute his injury to that fall as men go crazy from so many causes; it is not impossible for it to occur; in the absence of any knowledge whatever of it occurring from any other cause I might say that that would be it; that it might be attributable to this. I have had a great many cases of persons suffering from mental aberration. I have had a good deal
96 of experience; if I had *of* had such a fall as this, with my experience as a physician and upon picking myself up after the injury have found that my knees were contused and pain in the lower part of my back, I would have treated myself for a little while, but with my knowledge of nervous troubles I should have advised some other physician, some man well versed for ordinary hurts. I have treated myself often.

When Dr. Du Bose was first received there were about a dozen persons in the room with him; they were not of his condition of life; I think I moved him either that day or the next; most of them were of a lower class of society; he was better pleased when he was placed by himself; those patients with whom he was first placed were both white and colored, a majority of them were colored people; he did not appear

to fancy being with them; I always look on these nervous people
97 with a great deal of doubt, when they come to the hospital, and I had the plaintiff watched, and I found that his shuffling gait was not assumed; what he complained of was genuine; in speaking of his love affairs, he did not know what his lady love would think to see him in this unfortunate state; he said he was engaged to be married; I don't think he said anything about his ability to marry, but it chafed him a great deal to think that he was in a charitable institution; he became almost morbid about what she would say about it; I think he objected to my making any examination; I don't think I made a final examination of him; when I put him in a room by himself he talked about medicine and everything; then he grew worse, and when he did grow worse it was very rapidly; it seemed to be a kind of acute
98 melancholy; he told me about pains in his back and his head sometimes; I do not know that I gave him anything more than a general laxative; I did not regard him as a patient as much as I did that of a sojourner; a person employed as an Army surgeon after such an injury is not in danger of being exposed to cold in a hospital if he is in doors all the time.

And thereupon the defendant rested.

The testimony on both sides having been closed, the court at the instance and request of counsel for the plaintiff, instructed the jury as follows:

1. It is the duty of a municipality having the power to repair its streets to keep them in such condition as to be safe for travellers, and any neglect in this respect, or the continuance in the highway of a dangerous obstruction created by the municipality will render it liable to any
99 traveller properly using the streets for all damages he may sustain by reason of such neglect, provided that he did not contribute to the injury.

2. If the jury find for the plaintiff on the question of negligence or absence of negligence in the defendant, then they are instructed that plaintiff in that case is entitled to recover such damages as will fully compensate him for all injuries resulting directly and naturally from defendant's negligence, whether such injuries were developed immediately or after the lapse of time, and they should take into consideration the pain suffered, the injury to his health and probable duration thereof, the incidental expenses and any pecuniary loss he may have sustained directly resulting from his injuries and alleged in the declaration.

The counsel for the defendant thereupon requested the court to grant the following prayers and instructions to the jury, which
100 were by the court granted.

1. If under the instructions of the court the plaintiff can maintain a suit for any injury received in manner as detailed, then the court is asked to instruct the jury, that he can recover damages only for the injury produced directly by the fall as proved. That he cannot recover for any injury suffered by him after the accident if his own want of care of himself after the injury in any way contributed to it.

2d. That if the alleged paralysis and mental derangement suffered by the plaintiff are in any degree due to a want of proper care of himself, under exposure or neglect of secondary symptoms, or neglect of ordinary skill, in the treatment of himself at any time after the accident, then for such paralysis, mental derangement, and other suffering connected therewith, he cannot recover in this case.

3d. That if the jury believe that instead of treating himself in

101 the first instance he ought to have employed a surgeon to treat him and it was want of proper care not to do so, that his neglect to do so will prevent his recovering damages for the secondary suffering and loss which folllowed said accident, and is traceable to said neglect.

4. That the rule of damages is the rule of fair compensation. The burden of proof is on the plaintiff. He must show that his fall was occasioned wholly by the neglect of the defendant, to which no neglect on his part contributed.

He must also show that all that he has since suffered is due entirely to his fall, and that no want of proper care and skill on his part countributed to it. That he used due care and skill in the treatment of himself and suffered paralysis, impaired mind, and attendant injury in spite of such skill and care.

102 The counsel for the defendant further asked the court to instruct the jury as follows:

1. The court is asked to take the testimony of the plaintiff from the jury for the reason that his mental faculties are so far impaired and diseased as to render him incompetent to testify as a witness.

2. If the court does not grant the above prayer, then the court is requested to instruct the jury that the testimony of the witness is wholly unreliable and cannot of itself be held sufficient to prove any fact whatsoever.

3. If the court takes the testimony of the plaintiff from the jury, then I ask it to instruct, that there is no sufficient testimony in the case as will warrant the jury in finding that the present condition of the plaintiff was wholly produced by his fall; that all his statements to medical witnesses, after his mind was impaired, partake of the infirmity, which renders him an incompetent witness; and that all such
103 medical testimony must also be withdrawn and not considered by the jury.

4. That the plaintiff being a surgeon, is to be charged with such care and skill of himself in the knowledge of his injury and the proper treatment of himself as a surgeon of ordinary skill would have exercised, and if he did not exercise it while his intellect was sound he cannot recover for paralysis and impaired mind which came upon afterward.

5. If the jury find that the plaintiff, when he met the three ladies turned voluntarily to the left, when he could as easily have turned to the right, and that in consequence of his turning to the left, he continued on his way and fell off at the steps, then he cannot recover in this suit.

But the court refused to grant said prayers, and refused to in-
104 struct the jury as requested by counsel for defendant, to which ruling counsel for defendant, then and there excepted, and the exception was noted upon the minutes of the court before the giving of the verdict herein.

And the court instructed the jury as follows:

This case has been argued by the gentlemen fully on both sides. The law, the liability on the part of the authorities of the municipal corporation, seems to have been pretty well settled. It is, if the public highways which are in charge of the municipal authorities are left in a condition which resulted in injury to individuals who have the right to travel them, the municipality is responsible in damages for the result. You may find it hard to satisfy yourselves how far the injury complained of resulted from negligence of the District authorities. It is a rule of law that the wrong complained of must be what is called the

105 primary cause—that is, the next immediate cause of the injury which is suffered. For example, if the authorities leave an obstruction in the middle of the street by which my carriage is injured, the negligence of the authorities would be approximate, the immediate cause of the injury to me; but if the obstacle to my carriage caused my horse to run away and my carriage collided with another man's carriage, throwing the man out and injuring him, another cause would have intervened, and negligence of the authorities would not be the approximate cause of the other man's injury. So that if no other cause intervenes between the wrong committed by the authorities and the result complained of, the result is not to be attributed to his negligence. The wrong complained of must be the direct cause, the first cause, not in point of time, but it must be the only thing that can account for
106 the injury. If other causes intervened in this case—if the Dr. neglected to take proper care of himself, and any intermediate cause accounts for the sufferings that he now endures, then his present condition is not to be charged upon the defendant. The burden of proof is upon the plaintiff to say what he is entitled to, and he must show that the wrong act, the negligence upon the part of the District, was the only cause of the injury. He may trace it back by testimony to show that no cause did operate to produce the result, and that this is the only thing that explains it, and if he satisfies you that the whole of his suffering is to be traced directly, although remotely in point of time, to the first injury, then he has made out his case and entitles him to recover for the whole of it.

The burden is upon him to satisfy you, and if you find that his
107 own neglect of himself by his intervening services in the Army of the United States produced the result you are not to charge his present condition upon the authorities of the District. You have to weigh all the testimony on this point as well the medical testimony as the testimony of the plaintiff. Of course, the testimony of the plaintiff is to be taken with some allowance, considering his condition of mind and his incapacity to remember all the circumstances which may throw some light on his present condition.

On the subject of damages it is almost impossible for the court to give any rule. He is not a man of any family, and nobody but himself to take care of, and money beyond the very necessaries of life will be of no use to him. If it is true he is totally incurable, any amount of money cannot restore his loss of intellect. He is probably incurable, probably inflicted with softening of the brain. You must look at his suf-
108 ferings and do the best you can between the parties.

And thereupon the jury retired to consider of their verdict, and the verdict of the jury was for the plaintiff in the sum of ten thousand dollars.

Whether upon the whole the rulings of the court, as herein set forth and excepted to, were in accordance with law, and whether upon this evidence the damages found by the jury are not excessive, are questions submitted to the court in this case and bill of exceptions.

And the counsel for the defendant requests the justice who presided at the trial of said cause to sign the same and put his seal thereto, which is accordingly done (now for then) this 10th day of May, A. D. 1880.

[SEAL.] WALTER S. COX, *Just.*

The counsel objected to the signing of the bill of exceptions on
109 the ground that the appeal was taken too late.

W. S. COX, *Just.*

Proceedings before the supreme court of the District of Columbia in general term, commencing on Monday, the 19th day of April, 1880. Present, Chief Justice Cartter and Justices Wylie and Cox.

* * * * * * *

MONDAY, *June* 14, 1880.

Session resumed pursuant to adjournment. Present, Justices Wylie, MacArthur, and Hagner.

* * * * * * *

E. W. DU BOSE, PLAINTIFF,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } At law. No. 19749.

Upon calling this cause the plaintiff's counsel, Messrs. Armes & Birney, submit it upon their brief; but Mr. Riddle comes afterwards and commences an elaborate consideration of the case.

110 TUESDAY, *June* 15, 1880.

Session resumed pursuant to adjournment. Present, Justices Wylie, MacArthur, and Hagner.

* * * * * * *

E. W. DU BOSE, PLAINTIFF,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } At law. No. 19749.

Argued by Mr. Riddle in support of defendant's motion for a new trial upon exceptions, and submitted.

MONDAY, *June* 21, 1880.

Session resumed pursuant to adjournment. Present, Justices Wylie, MacArthur, and Hagner.

* * * * * * *

E. W. DU BOSE, PLAINTIFF,
vs.
THE DISTRICT OF COLUMBIA, DEFENDANT. } At law. No. 19779.

Now again come here as well the plaintitiff as the defendant, by their respective attorneys, and because it appears to the court here
111 that there is no error either in the record and proceedings, or in the judgment of the court, therefore it is considered by the court that the said judgment be, and the same is hereby, affirmed, the defendant's motion for a new trial upon exceptions notwithstanding, and that the plaintiff have execution of his said recovery with costs, to be taxed by the clerk.

112 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Emory W. Du Bose, plaintiff, and the District of Columbia, defendant, No. 19749 law docket 23rd, a manifest error hath happened, to the great damage

of the said defendant, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 22 day of June, in the year of our Lord 1880, and of the Independence of the United States the 104th.

[SEAL.] R. J. MEIGS, *Clerk &c.*,
By R. J. MEIGS, JR., *Ass't C.*

DISTRICT OF COLUMBIA, *to wit:*

To E. W. DU BOSE:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the District of Columbia, appellant, is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

Test:

[SEAL.] R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, JR., *Ass't C.*

Service acknowledged June 29, 1880.

A. A. BIRNEY,
C. H. ARMES,
Att'ys for Plaintiff.

113 AUTHENTICATION OF RECORD.

Clerk's certificate.

CLERK'S OFFICE,
Supreme Court of the District of Columbia:

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals, together, constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 27th day of August, 1880.

R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Assistant Clerk.*

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 27 day of Aug., 1880.

[SEAL.] D. K. CARTTER,
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 27th day of August, 1880.

R. J. MEIGS, *Clerk.*
By J. R. YOUNG, *Assistant Clerk.*

(Indorsement on cover:) No. 869. The District of Columbia, plaintiff in error, vs. Charles H. Armes, administrator of E. W. Du Bose, deceased. Dist. of Col. supreme court. Filed 23rd September, 1880.